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# Near East/South Asia Report

ISLAMIC SYSTEM OF GOVERNMENT:  
CONCEPTUAL FRAMEWORK

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24 MARCH 1987

## NEAR EAST/SOUTH ASIA REPORT

### ISLAMIC SYSTEM OF GOVERNMENT: CONCEPTUAL FRAMEWORK

Beirut AL-'AHD in Arabic 8, 29 Nov and 5, 12, 19 Dec 86

[Article: "An Inquiry into the Intellectual Basis of the System of Government in Islam"]

[8 Nov 86 p 12]

[Text] With the victory of Islam and the establishment of its blessed state in Iran under the leadership of Imam Khomeyni, the question of an Islamic system of government has been forcefully set forth recently. Although the question of an Islamic system of government is one that is important and delicate, from the point of view of Islamic doctrine, modern Muslims have not attached to it the same importance they used to attach to it in the past. In fact, after years of having no Islamic system of government, the idea of an Islamic government or a theory of one never crosses the minds of many Muslims.

Numerous and varied factors brought about that situation, but the two foremost factors are historical.

1. After the death of the great prophet, may God bless him and grant him salvation, the Islamic system of government became corrupt in practice. This blatant corruption started when the caliphate turned into a despotic and tyrannical system of government under the Umayyads and the ruling families that succeeded them. When this corruption, aided and abetted by other factors, grew and became worse, there was a state of general deterioration in the lives of Muslims on all political, intellectual and social levels.

2. The other factor is a historical factor that manifested itself in a plan by western colonialism to infiltrate and conquer the Islamic world. The aforementioned corruption helped bring about the success of this plan whose implementation began in a serious manner on a political plane early in the seventeenth century A.D. with the occupation of Indonesia in 1602. Then, significant progress was made during the second half of the 19th century, and the plan achieved its highest and greatest success at the end of World War I when the Islamic world in its entirety fell directly into the clutches of European colonialism.

The political and military campaigns were accompanied by a grave intellectual invasion whose most important tools were the Orientalist movement and the

missionary plan. Under the wings of this continuing invasion national tendencies were being promoted for the purpose of dividing Muslims and breaking them up politically. Thus, secularism, which manifests itself in the separation of religion from the state, found its way to the minds of many Muslims, particularly those who became westernized. An idea which was born in Europe, secularism is historically associated with the history of the conflict which developed in Europe during the Middle Ages between the church and the authority of the state. The success of this campaign of deception was prompted by the lack of interest that was shown by Sunni and Shi'ite Muslim scholars in the past. They did not focus attention on the question of the political system in Islam, nor did they highlight its characteristics and methods. According to al-Shaykh 'Abd-al-Karim al-Khatib, a Sunni scholar, the secret behind the Sunnis' lack of interest in the subject is due to the fact that they considered the method of government which was used to determine the succession of the Orthodox Caliphs to be an ideal one in the absence of the great prophet, may God bless him and grant him salvation. That is what kept Sunni scholars from thinking about and looking for another method.

But, according to the competent authoritative scholar, al-Shaykh Ja'far al-Sabhani, the secret behind the Shi'ites' lack of interest in the matter is the fact that they did not have a far-reaching central Islamic government. Instead, they had a relatively limited number of mini-states like those of al-Hamdaniyin, al-Buwayhiyin and al-Fatimiyyin. And since scholarly research is usually associated with essential and problematic topics, scholars have historically concentrated on studying those matters which have to do with the land tax, distribution of wealth, seizing power from an unjust ruler and other such matters. But they did not examine in detail the processes and problems of Islamic government. Some people may have another explanation for this matter.

In this regard al-Shaykh al-Sabhani goes on to say that Ibn al-Nadim had mentioned in his bibliography a book by Jabir Ibn Hayan, who was a student of Imam Ja'far al-Sadiq, may God's peace be with him, who died in 200 A.H. The book is entitled, "Al-Hukumah" [The Government], but we do not know any particulars about this book.

In his valuable book, "Ma'alim al-Hukumah al-Islamiyah," [Hallmarks of Islamic Government] al-Shaykh al-Sabhani adds: "Some Shi'ite scholars wrote books and essays on some matters that are related to government. For example. there is "Qati'ah al-Lajaj fi Hall al-Kharaj" [The Definitive Approach to Resolving Land Tax Disputes] by the magistrate al-Karaki, who died in 940 A.H.; and there is "Al-Kharajiyah" [Land Tax Issues] by the magistrate al-Ardabili, who died in 993 A.H. That [epistle] is printed in the margins of the book, "Durar al-Fawa'id" [Golden Treasury] edited by the magistrate al-Kharasini.

Other essays on this subject were also mentioned by our very own scholar, al-Shaykh al-Tahrani. He referred to them in his encyclopedic work, "Al-Dhari'ah" [The Medium]. (See Volume 7, pp 68, 144.)

Other Shi'ite scholars wrote detailed books about defending and fighting for the cause of God, which are thought to be responsibilities of the state. They also wrote essays about seizing power from an unjust ruler.



Eminent Shi'ite scholars of this day and age have studied this vital matter. We mention in particular the two eminent scholars, Ayatollah al-Muhaqqiq al-Na'ini, who died in 1355 A.H., and the great ayatollah and greatest imam and champion of God's cause, Imam Ayatollah Rohollah Khomeyni, leader of the victorious Islamic Revolution. Ayatollah al-Na'ini's book, which is entitled "Tanbih al-Ummah wa Tanzih al-Milah," [Informing the Nation and Defending the Creed] was printed in 1327 A.H. and was highly praised by the two eminent scholars, Ayatollah al-Kharasani and Ayatollah al-Mazindarani. Ayatollah Khomeyni investigated the question of Islamic government in a detailed manner in a series of regular lectures which were printed under the title, "Al-Hukumah al-Islamiyah" [Islamic Government].

Eminent Sunni scholars have also written on the subject, but each one of them deals with some aspects of an Islamic government. I can mention in particular, the book, "Al-Amwal," [Property] by Imam al-Hafiz Abu 'Ubayd al-Qasim, who died in 224 [A.H.]. This book is one of the most valuable books that was written on the subject. Another book is "Al-Ahkam al-Sultaniyah" [The Sultan's Decrees] by al-Shaykh Abu al-Hasan 'Ali ibn Muhammad al-Mawardi al-Shafi'i, who died in 450 A.H. That book has 20 chapters. Another book, [also entitled] "Al-Ahkam al-Sultaniyah" [The Sultan's Decrees], is by al-Shaykh Abu Ya'li Muhammad ibn al-Husayn al-Fara' al-Hanbali, who died in Baghdad in 458 and was a contemporary of al-Mawardi. Another book is "M'alim al-Qurbah fi Ahkam al-Hisbah" [Characteristics of Kinship in the Principles of Making Bequests] by Ibn al-Ukhwah al-Qurashi, who died in 760 A.H. This is one of the simplest books written about making bequests in anticipation of a reward from God in the hereafter. And there is yet another book called "Al-Hisbah fi al-Islam" [Bequests in Islam] by Ahmad ibn Taymiyah (661-728 A.H.). This is what ancient thinkers and scholars wrote.

More recent scholars have written a great deal about the subject in our age. As we mentioned, however, none of them went beyond providing descriptions of the Islamic government that was established at the time of the Orthodox Caliphs and during the age of the Umayyads and 'Abbasids after them. These books are more like chronicles of the Islamic succession than they are inquiries into its processes or delineations of its characteristics as these are outlined in the Koran and the tradition of the prophet.

Al-Shaykh al-Sabhani goes on to say, "It is baffling that this matter has been ignored and that our earliest writers paid no attention to it. At the same time, our past historians honored unjust rulers and praised them profusely. The history chronicled by those historians showed an interest in the lives of magicians and insane people and the conditions of young male slaves, monkeys, singers and dancers. An example of that can be seen in the book, 'Kitab Al-Aghani' [The Book of Songs] by Abu al-Faraj al-Isfahani, who died in 356 A.D.

"Those writers paid no attention in their books to the processes and characteristics of Islamic government. Nor did they write about what was mentioned about these subjects in the Koran and the prophetic tradition. They only made several brief statements on the subject, and that only reveals their lack of interest in this vital matter."

And now we are starting a colloquy about the system of government in Islam to show the intellectual and theological foundation upon which it is based. In this

colloquy we will rely primarily on what was mentioned in two books: "Asas al-Hukumah al-Islamiyah" [The Foundation of Islamic Government] by Ayatollah Kazim al-Ha'iri, and "Ma'alim al-Hukumah al-Islamiyah" [Characteristics of an Islamic Government] by the eminent authoritative scholar al-Shaykh Ja'far al-Sabhani. Both books were published in recent years.

The plan of discussion includes [the following]:

1. An introduction to the reasons why government is necessary. The existence of a government depends on its being vested with sovereign power. (That is, a government's existence depends on its right to impose its authority on people and suspend some individual liberties and rights to preserve the public's interests).
2. [The discussion also covers] the intellectual basis upon which government generally depends when it exercises its authority. The intellectual basis for an Islamic government will be examined in detail.

#### --Reasons Why Government Is Necessary

The social need for a higher authority to manage society's affairs and conduct its public business is very pressing. This higher organization can carry out the essential coordination between disparate social needs and the means for satisfying those needs, and it can also rally the active forces in society, steering them in a direction that would enable them to serve society's interests in the best way.

Such a higher organization is also needed to make justice widespread and to oppose injustice, attacks on others, and violation of their rights.

Consequently, society needs an organization that will assume the responsibility of unifying opinions on public issues where such unified opinions are called for. Society needs an organization that has the power to act.

In addition, there are many other matters which make the need for such a higher organization pressing and unquestionable.

If a small family, which is the nucleus of a large society, needs to have someone guide it, supervise its management, set its course and coordinate its affairs, doesn't society, with its different social units and different kinds of emotional, political and intellectual tendencies, also need someone to guide and manage it?

#### The Need for Sovereign Power

The important fact which emerges quite clearly when this higher organization or government goes about carrying out its duties is this: this government has to be empowered to command obedience so it can carry out its objectives and justify its actions when it bars individuals or groups in society from many modes of conduct in which they would become engaged, were it not for the government's interdiction. Government must also have the power to compel those people to pursue a certain course of conduct which they had not been forced to pursue previously.

Man is morally free to do as he pleases and to achieve what he wants to achieve. In exercising this moral freedom man relies on his innate ability to want something or not to want it and on his innate ability to act or not to act.

The human psyche will not prevent man from becoming engaged in any conduct, nor will it check his freedom except for one of two reasons:

#### First, a Divine Command and Interdiction

That applies to true believers who believe in the True Kingdom of God and the Almighty's everlasting power. Those people believe that they cannot legally disobey a divine command or interdiction. Thus, a believer's heart would allow him the freedom to act, but only within the context of what is permissible by God Almighty. In other words, the human heart gives a believer the freedom to act vis a vis other human beings, but it does not give him the freedom to act vis a vis the Almighty.

#### Second, the Rights of Other People

The human psyche understands that a person is free to the extent that his freedom does not infringe on others' freedom. If a person were to exceed those boundaries, his psyche would make him stop, and it would keep him from overstepping those boundaries of proper conduct.

There are no restrictions on the human psyche, but it is normal for a government to expand the range of restrictions it places on liberties and not to be satisfied with what the human psyche dictates to restrain behavior. A government could thus impose public restrictions on private conduct, or it could order the practice of another mode of conduct, as it does in traffic and other laws.

But in a society that believes in individual ownership, for example, this ruling authority must occasionally find itself compelled to restrict people's freedom in disposing of their property. For example, it can order that prices be fixed, and it can find it necessary to dispose of a certain commodity and so on. This can happen even though that society recognizes that individuals do own these commodities and that they do have power over them.

The fact that society does recognize personal ownership of property makes it necessary that we demand to know who empowered the ruling authority to depart from the system that was agreed upon by the ruler and the subjects.

And there is another matter: a state finds itself compelled to put pressure on individuals in many matters and to force them to assume certain positions with which they do not agree. It finds that to be necessary, either to have the nation speaking in one voice or to achieve another objective. A state may also find it necessary to rally its forces and strike an enemy in his positions before that enemy should attack society. Some individuals, however, might consider such an operation unjustified, and they might think that it distracts a nation's attention from the task of building its economy and from other similar tasks. It is not to be expected, however, that a government would allow those people to go about their business in accordance with their own conclusions. And

it is then that questions do arise about the justification for granting a government this power to apply pressure to people.

Actually, we cannot assume that a higher authority would be set up to govern a society and that members of that society would retain their original liberties intact. We cannot assume they will retain their freedom to act, to dispose of their property and to pursue their own modes of conduct according to their own personal beliefs. We must assume that this higher authority will have the power to impose, to restrain and to direct.

If there is no doubt about that fact, then questions about the state's authority and about the justification for it would become quite clear. This is what we will call "the source of sovereign power." That is, the source from which government derives its authority, its function as a guardian for society, and its legal competence to place restrictions on fundamental liberties.

We must then look for the sound principle from which government derives its authority and its broad sovereign powers. We must look for that principle which keeps government from becoming despotic and unjust.

[22 Dec 86 p 12] [Part III]

[Text] Our evaluation of the democratic system continues now as we make a fourth observation which has to do with the social contract on whose foundation that system stands.

Who, we wonder, would be the party entering into this social contract with the government? Would that party--and let's call them the people--be made up of those who are living now? Or is that party a juristic person, encompassing more than those who are living at the present time and including at least those who will be living in the future? Let's call that party the nation. Who has sovereign power? The people or the nation? These are two different approaches to democracy.

In his book, "Al-Islam wa Mabadi' Nizam al-Hukm" [Islam and the Principles of a Government System], Dr 'Abd-al-Hamid Mutwalli explains (pp 200 - 203) the importance of distinguishing between the principle of the people's sovereignty and that of the nation's sovereignty.

First, according to the theory of the people's sovereignty, voting is considered to be a right because citizens who are living at the present time are thought to be vested with sovereign power. That is, each citizen is entitled to part of that sovereign power. Accordingly, he has the right to participate in the affairs of power, that is, in sovereign affairs. However, if we were to adopt the theory of the nation's sovereignty, we would find that the preponderant opinion in that theory views voting as a function or, as a few French scholars of jurisprudence have described it, a legal power. This means that according to this theory a voter undertakes that function on the nation's behalf, not because he has a right to vote on his own behalf. In serving this function a voter is like anyone who performs a public service. Consequently, a legislator has the right to impose conditions and restrictions that an individual must meet to qualify as a voter. Such conditions and restrictions would ensure that the voting function would be properly carried out.

Second--and this is the more important outcome of making this distinction--these two theories, that is, the theory of the people's sovereignty and that of the nation's sovereignty, project two different images. Unlike the theory of the nation's sovereignty, the theory of the people's sovereignty does not permit methods that set up barriers, nor does it permit a policy of stability. The French describe that as a system of checks and balances.

A. To expound upon the foregoing we say that, according to the theory of the nation's sovereignty, it becomes permissible and legitimate for the constitution to stand in the way of a parliamentary majority's ephemeral whims or desires. That is, the constitution should act as a mechanism by means of which the process of issuing such decrees can be deferred until assurances and confirmation can be provided that these decrees are an expression of a confirmed wish that grew out of a thoughtful and deliberative process and was not the product of ephemeral whims and notions. Such a wish would be correctly described as one expressing the true interests and wishes of the nation. As was previously mentioned, that term includes future generations as well as the present generation.

On that basis, proponents of the theory of the nation's supremacy find it permissible that the executive authority have the right to oppose a parliamentary decree. This is what is called the right to veto a decree.

Proponents of this theory also find it legally permissible that parliament consist of another body besides a house of representatives, if the aim of that other body, which is usually called a house of elders, is to represent that "confirmed wish" which we referred to. French scholars of jurisprudence describe that as the long term tendencies of public opinion.

B. Proponents of the theory of the people's supremacy, a theory that goes back to Rousseau, see the matter in an opposite light. They think that the majority's wishes must be honored and carried out without any need for further inquiry into whether or not those wishes represent the "confirmed wishes" of the nation. On that basis, proponents of that theory think that the executive authority may not have the right to veto. They also think that parliament may not be made up of two bodies. Instead, it should be restricted to one assembly, except in the case of a custodial state or a federation.

C. Rousseau thinks that the people's representatives have to yield to the people's wishes. Voters give those representatives their instructions, and they let them know their wishes; those representatives have to carry out those instructions and wishes. Voters also have the right to remove those representatives from office whenever they wish.

This is what we wanted to relate from what Dr 'Abd-al-Hamid Mutwalli said.

At any rate, if proponents of democracy say that it is the people--that is, those who are actually living--who enter into a contract with the government, the question is raised about the rights of future generations and the rights of those who are living now but are not yet of legal age and cannot vote. What is the justification for giving the right to exercise this sovereign right to individuals who are living now and who are of age?



It may then be said that future qualified voters, if they constitute a majority, could change the law if they think that it does not serve their interests. If they are a minority, then there would be no problem except for what has already been said about the majority destroying the rights of the minority. It has also been said that even on the principle of majority rule the only confirmed approval on record is that of the majority. And that leads to the destruction of the minority's rights and to control of their interests.

If such a statement were made, it may be rebutted by making it clear and understood that there are differences between this minority--the one that consists of future voters and people who are still under age--and the minority we spoke of earlier. This difference may be summarized as follows:

First, it could have been assumed--and such an assumption is possible and reasonable--that the people, as separate individuals, have agreed on the principle of adopting the majority's opinion. That assumption, however, would not be valid with the minority we have here. How can we guarantee the minority's approval of this principle when they move forward or reach the legal age? And if this minority did not approve, what should be done to guarantee the fulfillment of the social contract for a reasonable period of time?

Second, the inadequacy of a person who is a legal minor may be as obvious as it is, for example, in a small child or a non-discriminating adult. It may also not be so obvious. Herein lies the need for enacting a law that distinguishes persons who are legal minors from others. But who should enact such a law? Should it be enacted by the majority or their representatives, even though we would not know how many people would be qualified to vote before such a law is enacted? If we have not yet identified the adults of legal age, can we claim to have a consensus even on the principle of adopting the majority's opinion?

Third, future voters or legal minors upon reaching their age of majority could gradually form a majority that can change the law in its favor. They could thus prevent the outgoing majority from hurting their interests from now on. But how can this majority--even though they are a majority--wipe out the damage they suffered as a result of the implementation of past laws when it's too late to correct the damage? [Let's assume], for example, that oil fields and oil reserves in a certain area were sparse and the majority thought that every drop of that oil should be sold. So production was raised to the maximum level until the oil was depleted. While that majority prospered, a pressing need was created for future generations who will be forced to buy oil from international markets for very high prices. And the same principle applies to deforestation efforts which are carried out in one period and affect the quality of the environment in a subsequent period. It also applies to long term trade or political agreements and such matters.

All this holds true if the first path is taken, the path in which the people enter into a social contract with the government.

If the second path is taken--the path in which it is the nation, and that includes future generations, that enters into a contract with the government--then the question that arises has to do with how the rights of future voters and the rights of individuals who are not of age can be guaranteed. (The question even covers the rights of legal minors, notwithstanding our discussion of that subject.)

Democracy can answer such a question by taking a few measures that would guarantee their rights. Examples of these measures, most of which appear in what we cited from Dr 'Abd-al-Hamid Mutwalli's book, are as follows:

First, voters should commit themselves to consider the nation's public interests, and that includes the interests of future generations. They should not confine their considerations to their own interests and their own wishes. This is based on the fact that future generations have a right to the resources of land and nature, and they are expected to participate in social life.

Elected officials and representatives of the people are thus obligated not to confine their considerations to the interests of the people who elected them. They are obligated to expand the scope of their considerations to include the interests of the entire nation.

Second, members of parliament are to be given a certain measure of independence from voters so they can have an opportunity to take the rights of future voters into account and not be bound and restricted by the interests of those who elected them.

Third, parliament may be divided into two houses, one for representatives and another for elders who would be elected on the basis of their lengthy experiences and worldly wisdom. Such experience and worldly wisdom would make them qualified to think about the nation's long term interests.

Fourth, the executive authority may be given the right to veto a parliamentary decree to preserve the rights of future generations.

And yet, these measures would not constitute a useful remedy for the problem even if we were to overlook the meaninglessness of assuming that all those who are living now--the people and the government--would actually act according to the interests of the entire nation, which includes future generations. These measures would not work even if we were to overlook the meaninglessness of a guarantee that those who are living now would not deviate from that course after a period during which the narrow and material fields of this world provided their only personal motivation, and religion, in the true sense of the word, was not taken into account.

Indeed, even if we were to ignore that, there would still be a question about how a social contract could stand on that basis when future generations had virtually no one representing them and speaking for them when the contract was approved.

It cannot be claimed here that future generations are represented by all or some of the people who are living now, nor can it be argued that the people represent the nation. Such representation requires a prior agreement between the representative and the party that is being represented. If no such agreement exists, who gave those people permission to become guardians over the others and represent them?



If it is claimed that such guardianship and such a contract are not necessary, we would say that if they weren't, we might just as well deny that agreement of those who are living is necessary for a contract with the government to take effect! We can then revert to despotism or dictatorship!

But since an effort is being made to set up a government that is based on a social contract, conflict with that inescapable restriction is inevitable in the process of achieving a contract in which at least the representatives of the disenfranchised would participate.

That is why we thought that we could not achieve a proper form of government--be it a dictatorship or a democracy--which can be justified by human sentiment if we did not look at the question of government from Islam's perspective.

#### The Proper Source for the Continuity of Sovereign Power Is God Almighty

In accordance with sentiment, and as we shall see, God Almighty is the proper and only source of sovereign power.

God Almighty is the Creator; He created man. The Creator is the Only One with title to His creatures. He is the only one qualified to lay down the laws that govern the existence and lives of His creatures. The Creator's laws govern the existence and lives of inanimate objects and of creatures who are not endowed with reason and who in God's wisdom carry on their lives in a mandatory, blind manner according to the fixed laws and rules of nature. The Creator's laws also govern the existence and life of man, that rational being, who in God's wisdom was granted the will and the ability to make choices. Besides, God Almighty showed His mercy to man in the prophecy through which laws guaranteeing man's fulfillment and happiness were revealed.

In light of that fact then, it is God, the Merciful and Almighty who has the exclusive right and ability to make the laws which govern man's life. Any law that is not divinely inspired is flawed and lacking. How can man make laws for himself when he cannot control his own whims? How can man make laws for himself when he does not know much about his own makeup, not to mention his ignorance about his interests?

This fact has been and is being proven continually by man-made laws and systems, including democracy. None of the man-made systems are able to solve the sharp social crises and problems that plague their people. That is why we observe that as soon as one law is enacted, it is replaced with another. By the time one political scandal is left behind a second one is revealed. And there are many such flaws that need not be mentioned here.

There is no doubt that human sentiment would agree with and even adopt the notion that the True Almighty God is the source of sovereign power. It is self-evident that this is what is affirmed by Islam, the last of the divinely inspired messages.

And now we come to the natural question that would be raised at this point: To whom has God given this sovereign power? Muslims have reached a consensus that God Almighty has given this sovereign power to the infallible one, Muhammad, the greatest of God's apostles, may God bless him and grant him salvation. God Almighty says, "The Prophet has a greater claim on the faithful than they have on each other" [al-Ahzab: 6]. God also says, "Believers, obey Allah and the Apostle and those in authority among you" [al-Nisa': 59].

Thus, besides his role as an apostle, the prophet, may God bless him and grant him salvation, was also a ruler and political leader.

Shi'ite Muslims claim that this sovereign power was also granted, by stipulation, to the 12 infallible imams, may God's peace be with them, after the prophet's death. Although some of them were prevented by some circumstances from actually exercising that sovereign power fully, the Prince of the Faithful, Imam 'Ali, may God's peace be with him, was in power for several years. Imam al-Hasan also served, but his tenure lasted no more than a few months.

But upon whom has God bestowed this sovereign power after the departure of the infallible one? For Sunni Muslims the departure of the infallible one is marked by the prophet's death; for Shi'ites it follows the departure of Imam al-Mahdi, may God's peace be with him.

Naturally, we raise that question based on the fact that we accept the notion that it is inconceivable that Islam would have ignored this important and fundamental aspect in the life of human society after the prophet's departure. Islam is a complete and perfect religion, and it would not have ignored the need for government, which, as we previously noted, requires sovereign power.

Did Islam give this sovereign power to the nation to exercise through consultation, as a few Muslim theologians, especially Sunni theologians, think?

Or did Islam give this sovereign power, as Shi'ite theology holds, to a just theologian who meets the conditions for having it as the prophet's representative after his departure?

If this sovereign power were given to a theologian, does this mean that the nation's role is abolished?

The constitution of the Islamic Republic in Iran, which is the only Islamic government in our present age, has adopted the second way; that is, it has chosen the sovereign power of the theologian. But the constitution gives the nation a broad range in which it can exercise its political role through consultation. The nation participates in the political process within the boundaries of legitimate Islamic standards under the supervision of the theologian who is in power. In other words, Iran has a system of consultation under the sovereign power of a theologian.

Along with defining the qualities of a sovereign theologian, this constitution acknowledged that among all the conditions that are required in that theologian is the nation's endorsement and acceptance of his leadership.

(The inquiry is to be continued.)

[29 Nov 86 p 12] [Part 4]

[Text] We proposed two possibilities in the discussion we had in the last installment about the organization which was given sovereign power by Almighty God after the departure of the infallible one.

We said that this power was given either to the nation or its religious and political leaders through consultation and advice, or it was given to a just and competent theologian, and that has been sanctioned by the constitution of the Islamic Republic. Before discussing this in detail, it would be useful to start with a quick review of selected passages from the constitution of the Islamic Republic. These passages have to do with the form of government that has been sanctioned. We are bearing in mind that the Islamic Republic is, as we've said, the only system of Islamic government in our present age.

Article Four of the constitution stipulated that the canonical law of Islam supersedes all civil, penal, financial, economic, administrative, cultural, military, political and other laws and decrees.

Article Five also stipulated that in the absence of Imam al-Mahdi, may God's peace be with him, sovereign power was to be vested in a just and devout theologian who is knowledgeable about the affairs of the age, and who is also courageous and capable of managing and taking care of affairs. Such a person has to be approved by a national majority and accepted by them as their leader, as is the case with the leadership of Imam Khomeyni, may God protect him.

If no theologian wins such a majority spontaneously, this sovereign power is bestowed upon someone who would be chosen by a council of experts who are elected by the people, as is specified in Article 107 of the constitution. That council might select a certain theologian who has the necessary characteristics. If no such person is found, the council shall appoint three or five authoritative theologians who meet the conditions for leadership. The council is to make those individuals known to the people as members of the command council.

Article Six of the constitution stipulated that the country's affairs are to be managed "by relying on the nation's opinion which is to be made evident in a presidential election--the president's position is the highest in the state after that of the command council--and in elections that are held for members of the Advisory Council and their counterparts. The nation's opinion can also be determined by referenda on matters as stipulated in the constitution." Article

59, [for example], stipulates that referenda can be conducted on important economic, political, social and cultural issues. This article requires that two thirds of the members of the Islamic Advisory Council give their consent to holding a referendum.

The Islamic Constitution approved the principle of separation of the three powers: the legislative, executive and judiciary. These powers are to exercise their authorities under the supervision of the theologian who is in charge, but, as stipulated by Article 57, it is the president of the republic who coordinates their activities.

The manner in which a just theologian should exercise his power and see to it that the nation is doing what it is supposed to do becomes evident when one notices the following mandates that are given to him in Article 110 and in other articles of the constitution as well.

1. He is to oversee the "Islamization" of laws and decrees by appointing theologians to a council for the preservation of the constitution. This council monitors the laws and decrees which are issued by the legislative authority, as represented by the Islamic Advisory Council. (That was mentioned in articles 4 and 91 and in other articles as well).

2. He is to oversee the sound processes of Islamic jurisprudence, as stipulated in Article 162 of the constitution, by appointing to the positions of chairman of the Supreme Court and public prosecutor competent and fair-minded individuals who make independent judgments.

The theologian who is vested with this power has the right to pardon or commute the sentences of those who have been duly convicted. He may issue such pardons or commutations within the boundaries of Islamic justice after the Supreme Court suggests it.

3. He oversees the affairs of the military and its various institutions in his capacity as general commander of the armed forces. He does that by appointing or removing from office the principal leaders of the military or by forming the Supreme Defense Council, which is made up of seven men, two of whom serve on that council as his representatives. He may also declare war and peace and order the general mobilization of the country when the Supreme Defense Council makes such a proposal.

4. He oversees the propriety of a presidential election by requiring the chief theologian's approval of the election results before the president exercises the duties of his office. He may also give the chief theologian the power to remove the president from office under limited conditions.

In addition, he has general oversight powers over other affairs of the state.

After this quick review of the constitution, we come to the detailed answers to the two questions--or two possibilities--that we raised regarding the [person or] organization to which sovereign power was granted by Almighty God in the absence of the infallible one.

Was this sovereign power given to whomever was chosen by the nation, or a segment of it--namely, its religious and political leaders--on the basis of consultation and advice, as we see in Sunni jurisprudence? Or was it given to a fair and competent theologian in his capacity as the infallible one's deputy, as sanctioned by the constitution of the Islamic Republic in Iran?

Let us add a third and a new question: If the constitution of the Islamic Republic has sanctioned the sovereign power of a theologian, how then can we explain the broad participation in the decision-making process that the constitution affords the nation through elections and referenda?

As far as the first question is concerned--that which has to do with the possibility of granting the sovereign power to whomever is chosen through an advisory process--it would be preferable before answering it to quote a statement that was made on the subject by a major contemporary Muslim author, the late Sayyid Qutb. In his book, "Ma'rakah al-Islam wa al-Ra'simaliyah" [The Battle between Islam and Capitalism] Mr Qutb says, "The kind of government that is required by Islam is an advisory government. The Koran explicitly stipulates that: 'Take counsel with them in the conduct of affairs' [Al-'Imran: 159]. However, Islam did not specify how people were to be consulted because this is a procedural matter which has to do with the needs, methods and resources that every age has at its disposal to achieve a given principle that applies to all places and all times.

"The advisory process continued to be restricted to Medina as long as that city continued to represent those people who held opinions. When the situation changed somewhat, the first caliph, Abu Bakr, sought the counsel of the people of Mecca regarding the war in Syria. He sought advice on a military operation outside Arab borders whose consequences would affect the people of Mecca as well as those of Medina.

"But when we come to this age, we find that the opinion of the masses is represented not only by those who live in Cairo, in Alexandria or in any other city." (The author is using Egypt to illustrate the idea). "Therefore, we must seek everyone's advice in a manner that would enable us to collect all opinions. This is a matter of procedure, and it has to do with execution.

"But the principle is unequivocally and solidly sanctioned in Islam, which requires nothing more than the removal of restrictions which make an election not represent the true opinion in the nation. Voters should not be at the mercy of landowners, employers or powerful people as they are now."

Many Sunni Muslim authors and scholars wrote about this matter. They tried to affirm in what they wrote that Islam had deliberately stayed away from providing a clear-cut definition of the principle of consultation, leaving that up to the

nation because the general character of Islamic law is realistic. Islamic law is flexible, and it is because of that flexibility that Islam has become an everlasting system that is suitable for all places and all times and all social conditions.

In his book, "Al-Shura bayna al-Nazariyah wa al-Tatbiq," [Consultation: Theory and Application] Qahtan 'Abd-al-Rahman al-Duri said, "A flexible form of government is eminently advantageous; the flexibility of the Islamic system of government has distinguished it from other systems and made it suitable for all times and all places."

But had Islam given the nation a system for consulting with the public and the main rules and principles for that system as well, allowing it to apply those rules and principles depending upon the different circumstances in each nation, such a system would have been flexible indeed. And that would have been a splendid advantage for Islam. As Mr al-Duri said, "Such flexibility would have distinguished the Islamic system from other systems, and it would have made it suitable for all times and all places."

The facts, however, are quite different. Numerous ambiguities and various criteria can be delineated even in the context of one period of time and under circumstances with common characteristics. And here the questions that arise go unanswered.

For example, if those who were being consulted were to disagree over something with the majority taking one side, while most of those who are upright, who enjoy a good reputation and who are socially well-known took the other side, which side then would be more acceptable and would predominate? Do we pay attention to quantity or to quality? And what would we do if both sides were equal in quantity and quality? Would one vote cause one side to predominate or not? Who are the people who should be involved in the advisory process? Is everyone who is suitable for giving advice entitled to do so, or is giving advice restricted to the few who are qualified? How many are those people? And how can all of this be gleaned from the provisions of the advisory process?

Some people may say in this regard that those whose counsel may be sought are all those Muslims who have an interest in the subject about which advice was being sought. God Almighty says, "... those who conduct their affairs by mutual consent" [Al-Shura: 38]. When one considers the pronouns in this clause, one realizes that those who take part in the advisory process are all those whose affairs are to be deliberated upon and conducted by mutual consent.

But how can the situation be resolved when it has to do with a matter that is related in one way to one community and is even more closely related to a private segment of that community? How can such a situation be resolved when Arabs can sometimes attribute "a matter" to that private segment and other times to the general community in which that and other segments can be found? Which one of these two groups (the public and the private) takes part in giving shape to such a picture?

For example, if the nation in general were to agree to elect the country's theologians to manage the government, and if a disagreement were to develop



among a majority of the people and among a majority of the theologians themselves about the coordination of activities and the division of tasks, what would we do and where would we stand after putting our faith in the principle of letting the majority carry more weight?

Here, on the one hand, we find that a majority of the people believe in referring all matters to theologians; they consent to that. On the other hand, we notice that a majority of the people also prefer to have a certain individual appointed to the position of head of state, or they prefer that government be conducted by a command council instead of a single person.

And what if most theologians themselves disagreed with the opinion held by the majority of the nation?

What is the important precept here? Is it the majority of the people because it is a matter that concerns them, or is it the majority of the theologians because this is a matter that has to do with their work and the manner in which that administrative work, which was entrusted to them, is to be divided amongst them?

That is one example. There is another one. Let's assume there are two communities and that one person was to be elected for each community. Each one of these two people would be knowledgeable about the interests of the community he represents. Instead of each one defending only the interests of the community he represents, these two representatives would work together to coordinate public and private interests in a manner that would enable them to realize the interests of the majority in both communities. Who then should have the right to elect those two persons? Should everyone in these two communities have that right, or should each person be elected to represent the community whose interests he is knowledgeable about and interested in?

Just as the matter can be attributed, by custom, to a special community, it can also be attributed to the majority. It is a matter that concerns everyone.

A third example: If advice were being sought on a law that would affect women more than other members of a community, should women be the only ones to vote on it because the matter concerns them, or should everyone be consulted on the matter because it concerns everyone? And which majority should decide the matter if there were a disagreement?

And, if a few individuals who are concerned with a certain matter were to refrain from giving their advice, does the advice become invalid? And if it did, to what extent would it become invalid? Would people be compelled to participate in the advisory process by those who gained authority and sovereign power in a previous period?

There are among the voters or advisers many who are powerless and many whose participation in the advisory process would not help us get close to what is more suitable [to a given situation] or closer to the truth. That is because those people lack the ability to think properly and to understand the subject matter that is being deliberated. Much of the general public and ignorant women in some social circles fall into this category. In many cases this group of powerless people make up a large section of the nation. Should those people take



part in the process because the matter concerns them too? Should we, on the basis of the Koranic dictum that we "take counsel with them in the conduct of affairs" allow everyone to participate in the process but small children, the insane and the stupid, for example? Should such people be invited, for example, to take part in deliberations merely on the basis of creating harmony and giving everyone some satisfaction? Or should their participation be rejected because the goal of the advisory process is to find out the best way, and their participation would prevent us from understanding the difference between a generalization and evidence?

Secondly, what exactly are the boundaries that separate those who have the right to participate in the elections from those who do not have that right?

These and scores of other piercing questions remain unanswered. Such unanswered questions leave society--any society--bewildered about the form of the advisory process it will choose for itself, one which can be assumed to be the proper one for this time and this circumstance.

Assuming that Islam advocates an advisory system, these ambiguities affirm that the flexibility of an Islamic system would have been quite advantageous for Islam if its rules had been defined so as not to lead to such extraordinary bewilderment. But letting matters take their own course, not educating people about these rules, and merely referring to a verse in the Koran to justify seeking counsel and advice demonstrates nothing more than a serious shortcoming that has nothing to do with Islam. It has nothing to do with the prophet of Islam or with the Almighty Creator.

This is the bewildering question that is being posed to the theory which advocates an advisory system. Let's find out how that question may be answered.

(This inquiry is to be continued).

[5 Dec 86 p 12] [Part 5]

[Text] We raised a question in the previous installment about the fact that Islam had not defined the rules and principles for an advisory system--assuming that Islam does advocate such a system. We also raised a question about the fact that such an advisory system was a principle for sovereign power and government. We questioned the allegation that the absence of such definitions was merely an indication of Islam's flexibility and its ability to adjust to the circumstances of every age. The implication of that question was that the absence of such definitions constituted a serious flaw, one that Islam, its prophet and its Almighty Creator are not guilty of. We said that we would try to find out how that baffling question may be answered.

It is possible for us to formulate the answer as follows:

#### The First Answer

It may be argued that questions about the imamate, the state and the method of government are matters of this world and that Islamic doctrine does not have to

interfere with them, just as it does not have to interfere with other affairs of this world. That is why the absence of an Islamic approach to government is not to be considered a shortcoming in Islam. But since Islam did deal with the question of government, it is only natural that it would not have provided more than an outline of a general framework for that question. It is natural that it would not have placed any restrictions which could prevent those general principles that were set forth from being applied universally under different conditions of time and place. That is why Islamic doctrine provided the general concept, and nations were left to determine the form and the specifics that they deemed appropriate. A nation could have been given the right to choose or reject an advisory system of government, and that would not have constituted a logical flaw in Islam because the question of an advisory system is one that has to do with worldly affairs.

It may thus be said that avoiding definitions which could become incompatible with different circumstances is one of Islam's eminent virtues.

This first answer, however, is quite false for the following reasons:

--First, the question of government and that of the imamate are essential questions that cannot be overlooked. It was up to the government and the imamate to preserve the origins and laws of Islam in society.

--Second, Islam is a complete and comprehensive way of life. It did not neglect to regulate the affairs of human life in this world. This becomes evident when one observes the economic and social systems that have been set forth; the modes of individual and social conduct that have been delineated; the family matters that have been regulated; and other such matters that have been set forth.

In fact, Islam's intervention in the affairs of this world is one of the essentials of the Islamic religion, or at least of Islamic jurisprudence. Only a supercilious person would deny that. With that in mind, how can we imagine that Islam, which has been trying to build societies and lay their foundations, would ignore the question of government, which is one of the most important issues in the life of a society?

--Third, the imamate or the establishment of a state involves, as we've explained earlier, causing one or more persons to exercise their influence in many areas, and that is not compatible with the people's most important precepts.

Accordingly, if the establishment of a state were not based on the foundation of an Islamic sovereign power, which is bestowed according to special rules upon those who meet the required conditions, it is conceivable that a nation could become involved in many forbidden activities. And that would interfere with the formation of any proper Islamic government; accordingly, a devout society could become involved in a severe and disconcerting predicament.

Let's elaborate somewhat on this point. The sovereign power which is to be bestowed upon a ruler or a governing body must empower him to take all actions without which there can be no state. For example:

1. A ruler vested with sovereign power must have the right to dispose of a minor's property.
2. He must have the right to warn insubordinates.
3. He must have the right to enforce legal laws and statutes even if he has to use coercive measures against those who do not voluntarily comply with them.
4. He must have the right to make a judgment on legal proceedings in a court of law.
5. He must have the power to unify positions whenever that becomes necessary, and he must also have the power to order mobilization and other such actions.
6. He must be able to prevail in a variety of other circumstances where the course of action is not self-evident, regardless of the constitutional process.

Possession of such sovereign power, however, frequently leads to the sanctioning of acts which were inherently impermissible. That can only be done in one of two ways:

--First, the impermissibility of a given act must be based on one of the established principles of Muslim jurisprudence, otherwise it must be corroborated by a resourceful assumption which had to be adopted in the absence of legal authority. And here the judgement of the person in charge, if he represents legitimate authority, should supersede the principle or the assumption in question.

--Second, the sovereign power can act upon a mandatory judgment and can thus affect the process by means of which a judgment is replaced and a change of subject authorized. This is similar to a situation in which a guardian had just cause to compel a person to sell his property. In such a situation a buyer may purchase this property even though purchasing property against a seller's wishes is usually not permissible. But here the guardian acted upon a mandatory judgment which would have invalidated the sale and disposal of that property. The purchase and sale of a piece of property becomes invalid in the absence of one of two conditions: the seller's consent and just cause for compelling the sale. The person who is pressing for a sale is the one who should show just cause for it. If there is just cause for the forced sale of property, and that just cause has been demonstrated by the guardian of the property, then the sale of said property can be valid. In other words, a guardian's consent to the sale is tantamount to the property owner's consent. However, the use of sovereign power directly to alter an existing mandatory ruling and turn it into a license to commit violations is not right.

Thus, an investigation into consultation becoming the basis for government must be based on the question of whether or not there is evidence to show that consultation, in a broad and exhaustive sense, can be a beneficial principle for sovereign power.

## The Second Answer

It may be said that the undefined general principles and the undefined advisory system may be due to an absence of common ingredients among a variety of circumstances, ages and places. Common general rules should not have been laid down for different situations, and, even if these rules were going to be applied in different ways, one rule should not be applied to a variety of situations. That is why Islam, being as realistic as it is, thought that this system should not be defined. In this regard, however, we note [the following]:

--First, this answer means that Islam is flawed! It means that the flaw is justified because it is inevitable since there are no common ingredients among the various conditions for which fixed and established rules can be written down.

If this possibility were admissible--that is, the possibility of an inherent flaw in the state system in Islam--then it would also apply to numerous aspects of that system as well. It could be applied to the economic and social aspects of the system, and it might be said that Islam was incapable of regulating all aspects of life properly. It may be said that that was why the principles of the system were sometimes left out--as is the case with the advisory system--or why they were sometimes included in a manner that made them suitable for application only during some periods of time and under some circumstances. When the principles were included, however, they were universally applied to all circumstances, even to those for which they were not suitable. Such universal application was necessary because of Islam's inability to determine some signs and indications which people could understand so as to enable them to determine what was and was not the appropriate situation for application of a principle.

Accordingly, it is claimed that this does not constitute a shortcoming in Islam but that it actually stems from the absence of an appropriate, truly flexible solution. Actually, it should not be assumed that there is a solution which Islam has not achieved.

Can such a possibility be entertained together with its consequences?

## The Evidence of Proponents of Consultation

Proponents of consultation as a principle for sovereign power cite as evidence numerous quotations from the Koran and the prophetic tradition. Two verses from the Koran make up their most salient evidence.

In the first verse God Almighty says, "Take counsel with them in the conduct of affairs; and when you are resolved, put your trust in Allah" (Al-'Imran: 159).

In the second verse God Almighty says, "...and [who] conduct their affairs by mutual consent" (al-Shura: 38).

Many stories urging people to consult and deliberate with each other can be found in the prophetic tradition. But our inquiry is based on the implications of these texts (notwithstanding the proper attribution of the stories which are mentioned in books about the tradition). In other words, do these texts indicate

that consultation is acceptable as a principle of sovereign power, or do they urge people to consult with each other merely so that they can become enlightened by other people's opinions and benefit from their experiences and expertise? Do these stories mandate, decree or authorize anything, that is, anything other than the aforementioned sovereign power, or do they signify something else?

Because of limited space we will limit ourselves to a discussion of what may be gleaned from the two verses of the Koran.

As far as the first verse is concerned, that is, God Almighty's statement to "take counsel with them in the conduct of affairs; and when you are resolved, put your trust in Allah," God Almighty was ordering his prophet to consult with those around him so that the nation may learn that members of a nation should consult with each other on matters of importance. One of these important matters is the succession, according to those who cite this verse in the Koran to show that consultation as a principle of sovereign power is a sound one.

But when one pauses to reflect upon and consider the significance of this verse, one discovers that it is a ruler with an established government who is being addressed here. God Almighty is ordering this ruler to consult with members of the nation, to become enlightened by their ideas and to benefit by consulting with them so that the best results may be achieved. Imam 'Ali, may the peace of God be with him, says "He who holds on to his opinions in a highhanded manner perishes, and he who takes the counsel of men in their affairs shares their mental power." The verse and what it signifies have nothing to do with the subject at hand.

In other words, although it may be argued that the verse can still be applied to all individuals in the nation even though it does not apply to the prophet, (that is, the prophet was not being addressed), one cannot go beyond what is being said here. The most that is implied by the verse is that an Islamic ruler and a person who wields power in an Islamic nation should not govern in a tyrannical manner. Instead, he should consult with his friends and assistants on all important and grave matters. But it is not possible, however, to say that it would be proper on the basis of that verse to appoint a ruler and a successor by consulting with others.

In addition to that, it is evident that the verse does not obligate or require a ruler to do anything after he seeks the counsel of others. Instead, he examines the points of view that are presented to him; he reviews the various ideas that are proposed; and he then adopts what in his opinion would be useful. But this can only happen when the one seeking counsel is a person of rank and authority, a person who is assumed to have sovereign power. In other words, he has to be a chief whose tenure in office is stable. If he is not, however, what the Koran authorized and urged cannot take place.

As far as the second verse is concerned--"... and [who] conduct their affairs by mutual consent..."--those who cite this verse as evidence that an advisory system is a sound one think that the use of the possessive pronoun in "their affairs" refers to everyone and everything, and that includes the succession and

the government. According to this verse, believers deliberate among themselves about all their affairs including the question of government.

We shall limit our response to this argument by considering the sphere of the advice which is urged or ordered by the verse. It is our contention that the verse refers to consultation on matters that are assigned to believers.

It must be surmised that this matter--that is, the appointment of a guardian--is associated with believers and assigned to them. If this is not surmised, one may not hold on to the universal implication of the verse in this context.

And since textual evidence has established--and many theologians think that--that sovereign power was granted in the age of [the prophet's] absence to a just theologian, in his capacity as the imam's deputy, then--according to that opinion--appointment of a person to the position of sovereign power is not one of "those affairs" which are referred to in the Koranic verse. The Koran also says, "It is not for true believers--men or women--to take their choice in their affairs if Allah and His apostle decree otherwise" [al-Ahzab: 36].

It thus becomes evident in light of all the observations and doubts that have been pointed out--not to mention what we did not mention for lack of space--that the appointment of a legal, general guardian is not the product of an advisory process.

This should not be taken to mean, however, that the advisory process has no role in government. In fact, what we found in our discussion of the constitution of the Islamic Republic is a significant role for the advisory process. It is, however, a role that is played under the guardianship of the theologian. We will try to show the intellectual foundation for that in our answer to the third question, God willing.

But there is another way for bestowing sovereign power on someone. It is a way other than consultation, and it was proposed by a few Sunni Muslim theologians. Sovereign power may be bestowed on someone by means of a declaration of allegiance. We ought to turn to that approach of bestowing sovereign power, even if we do so briefly, before we start answering the second question which has to do with a theologian's sovereign power.

This opinion indicates that a declaration of allegiance or a pledge to obey the ruler is a contract pursuant to which sovereign power is bestowed upon the person who receives the declarations of allegiance. That declaration of allegiance is the sole evidence for a ruler's sovereign power.

What may be cited as evidence in this regard is the first verse of the chapter, "al-Ma'idah" [The Table] in the Koran. "Believers, be true to your obligations." There are also stories which affirm that the condition does apply.

A brief response to that may be derived from statements by Mr al-Ha'iri: "An agreement or condition in Islam does not legalize what is sinful, nor does it provide many choices to those who have none by way of establishing legal punishments and such matters. But the sovereign power which is basically



sufficient for establishment of a state is the general sovereign power, which, as we've seen, sometimes includes the right to legalize what is inherently sinful and the right to make many choices. Islamic theology tells us that agreements and conditions are carried out strictly within the guidelines of Islam's fundamental precepts. And that is something other than sovereign power."

And how can the execution of such an agreement or condition upon a minority that had not consented to either, for example, be permissible?

And what do we do about someone who was not there when an agreement was made, but who is present subsequently? Can he become a party to the agreement, or does his appointed guardian do that for him on his behalf?

It has also been noticed that no mention is made in the Koran or in the prophetic tradition of any answers to scores of questions that are being asked to acquire an understanding of the restrictions and conditions for declaring allegiance to someone. How many people would be enough for a declaration of allegiance that would establish someone's sovereign power over Muslims? And when there is a difference, is the matter resolved quantitatively or qualitatively? There are other similar questions.

Historical records show that Muslims' declaration of allegiance to the prophet, may God bless him and grant him salvation, or Shi'ite Muslims' pledge of allegiance to their imams, may the peace of God be with them, is a pledge of allegiance that is associated with a previously held conviction that the person to whom allegiance is being pledged represents the rightful sovereign power. It is untenable in Islam that a pledge of allegiance to the prophet, may God bless him and grant him salvation, would constitute a condition for obeying his commands. That point of view is also untenable as far as the Shi'ites' pledge of allegiance to an infallible imam is concerned. In fact, a pledge of allegiance here may be tantamount to receiving in advance a pledge and a promise from the person receiving the pledge of allegiance that he would do his duty. This is done so that this pledge and covenant would become a new device prodding the man's conscience and heart to keep his promise. In other words, it is done to heighten his sense of responsibility.

(The inquiry is to be continued).

[12 Dec 86 p 12] [Part 6]

[Text] We now come to the answer to the second question, which has to do with the theologian's sovereign power. We will show the evidence and the conditions for this sovereign power.

The term, "theologian," as was implied previously, refers to a man who formulates independent decisions on legal or theological matters and who also has certain characteristics, which are the conditions for holding sovereign power.

This subject, that is, the theologian's sovereign power, has been dealt with by many ancient and contemporary theologians. Imam Khomeyni, may God protect him, is one of the most prominent contemporary theologians who dealt with it. He is



the one who deserves credit for introducing that concept into the modern political glossary. He is the one who gave it the major impetus it has in the lives of Muslims. He did that by formulating that concept into a political plan that was ready for government; that plan was adopted by the Islamic Revolution.

The positions of a theologian who applies the four principles of Islam to formulate independent decisions--and all these positions are implied in the term, the theologian's sovereign power--were derived from Imam Khomeyni's lessons on the principles [usul] of Islam. The lessons were reported by his student, al-Shaykh Ja'far al-Sabhani. There are three positions.

The first position is that of delivering formal legal opinions. Since accurate, scientific knowledge of the source references for the four categories of religious doctrine is difficult--these deal with religious observances, dealings, punishment, and policies--and since such knowledge requires effort and cannot be easily acquired by everyone, Islam has referred the delivery of formal legal opinions to a theologian who is knowledgeable about the doctrines of Islam. That is why such a theologian is called a mufti.

The second position is that of a jurist. Man's psychological and natural powers and instincts dictate that he should lean towards what is good for him and stay away from what is harmful. Thus, conflict over what is good for man becomes inevitable, and that conflict may lead to problems. To ward off such harmful situations, jurisprudence in Islam became the domain of a theologian who meets the conditions [of a fair judge].

The third position is that of government. One of the most important things that people need for the protection of their secrets, their lives and their unity is a leader in their midst whose orders are to be obeyed and whose actions are to be followed by everyone. This is the person who is known to legislators as ruler and politician. The first two positions were established for theologians by the consensus of theologians in the prophet's family, may God's peace be with them. But it is the last position that has been the subject of discussion. The attributions of accounts in the prophetic tradition and the significance of these accounts, which we will refer to later, have been debated. It is this last position which automatically comes to mind when the term, the theologian's sovereign power, is mentioned.

In exercising his power, a theologian does so in his capacity as deputy for the infallible prophet, may God have mercy on his soul, in the time of his absence.

But as Imam Khomeyni says, "This must not be misunderstood. No one should think that a theologian's competence to assume sovereign power elevates him to the status of a prophet or an imam. Our discussion here has nothing to do with status and rank, but it does revolve around a theologian's actual position. Having sovereign power means governing people, administering the state and carrying out the precepts of Islamic doctrine.

We talked earlier about the function of a theologian who assumes sovereign power as defined by the constitution of the Islamic Republic. To summarize that function one may say that it involves general supervision over the affairs of the state. The theologian sees to it that the three powers carry out their

responsibilities in a manner that safeguards the proper application of these responsibilities and the compatibility of actions with Islamic doctrines and the nation's interests.

A theologian's sovereign power is a relative matter that is effected by doctrine. Islamic doctrine considers anyone of us a guardian of the young. Similarly, a person who serves as guardian of a whole nation performs a function that differs only quantitatively from that of a person who serves as a guardian of the young. If we assume that the prophet, may God bless him and grant him salvation, and Imam 'Ali, may peace be with him, were guardians of young people, their function in this respect would not differ quantitatively or qualitatively from that of any other ordinary individual entrusted with the task of taking care of the young. Similarly, the task of taking care of an entire nation does not differ from the task that any scholarly, just theologian has in taking care of an entire nation in the time of the prophet's absence.

Let's assume that there is a just theologian who is capable of setting up the mandatory legal punishments. Would he execute them in a way that differed from that which was followed during the days of the prophet, may God bless him and grant him salvation, or the days of the imam and prince of the faithful, may God's peace be with him? Did the prophet, may God bless him and grant him salvation, order more than 100 lashes for an adulterer of questionable reputation? Should a theologian reduce the number of those lashes to establish a difference between him and the prophet, may God bless him and grant him salvation?

No, because a ruler--whether he is the prophet, an imam or a just theologian--is merely carrying out God's command and judgment.

The prophet, may God bless him and grant him salvation, used to collect taxes. He collected the "one-fifth" tax [the portion retained from the spoils of war], the alms tax, the head tax on free non-Muslims, and the land tax. Is there a difference between the taxes collected by the prophet and the taxes collected by an imam or a theologian who is in power at the time?

Indeed, many theologians assert that the establishment of the general sovereign power of theologians does not mean that they are, as the prophet and the imam are, more deserving than believers themselves.

According to custom, the command to obey the theologian who is in power has been taken to mean, as one of our theologians says, obeying him in matters that are usually referred to a guardian. One seeks a guardian, for example, to settle a dispute or a matter of social interest; one seeks him because an individual or an institution is incompetent; and one seeks him when one deals with the stupid, the poor, or with the property of a mosque. One does not have to obey the theologian, however, on matters of personal interest.

For example, if a theologian were to declare that it would be better for me not to travel on a particular day, the evidence he might present in his pronouncement does not give him the kind of power to decree that I should not travel on that day. Should there be confirmation of such power for a theologian, who is more deserving than believers, and for the infallible imams, may God's peace be

with them, it does not follow that such power would apply to [other] theologians because these are matters that one does not usually refer to guardians.

Another theologian comments on this point by saying, "The sound textual evidence we have in the Koran and the prophetic tradition does not corroborate what some theologians are saying about the power of the prophet and the imams over people's personal issues--issues that have nothing to do with government. We do not believe that investigating this matter would be useful because we can find no one who subscribes to this concept in theology, not even those who advocate absolute power for the theologian."

There is a point which has to do with a theologian's power and which may be raised by some of those who are influenced by the western spirit. It may be said that this power could lead to tyranny because, as they see it, it could mean an individual might deal with the administration and with government in a tyrannical manner.

A reply to that point of concern becomes evident when one observes the Islamic Revolution in action. We can either observe, as we mentioned previously, the broad range that was given to the nation to play its role, or we can observe the characteristics of the sovereign theologian which are emphasized in the Islamic constitution. Piety and justice are two of those characteristics because the sovereign theologian has to be guided in every judgment he makes by divine ordinances and by the idea of protecting the nation's interests from personal desires and passions.

#### Evidence for the Theologian's Sovereignty

Regarding the evidence confirming a theologian's sovereign power in the time of the prophet's absence, theologians who subscribe to that notion provided much traditional evidence of that. To that some theologians added logical justification and rational speculation.

The ongoing debate about this evidence, which we referred to earlier, is such that meticulous, scholarly research dealing with the attribution and significance of stories in the prophetic tradition is required for the confirmation of a theologian's sovereign power. But this is not considered a shortcoming in Islam, nor is it an indication of Islam's lack of interest in government in the time of the prophet's absence. The question of government is one of great importance. "It is natural," says one of our theologians, "that such mystery should surround the evidence hundreds of years after these texts were written. Such mystery is natural particularly in a subject whose application was hindered by circumstances that existed when those texts were written and afterwards. Thus, these matters did not linger in people's minds. And we all know the effect that the passage of time has on the loss of textual evidence. The chain of authority for those accounts becomes obscure, and sometimes even the significance of the account becomes obscure."

"If we were to add to that," says Imam Khomeyni, "the fact that even our own theologians were affected by colonialism's intellectual and political influence or pressure, [we would see] that if anyone wanted to talk about an Islamic government," (the imam made that statement before the Islamic Revolution) "he would have to do resort to taqiya[h] [dissimulation of one's religion under duress] or contend with the henchmen of colonialism."

Below, we will review some of the accounts cited by theologians, who subscribe to the notion of the theologian's sovereign power, to support their contention. We will pause briefly at the significance of these accounts, citing some of what these theologians mentioned [in their arguments]. But we will disregard their objections or scientific debates about corroboration or significance. These arguments, which were mentioned by each of them about this or the other account, dictated which story each theologian relied on in setting forth his argument.

1. 'Ali, the Prince of the Faithful, peace be with him, said that the prophet, may God bless him and grant him salvation, said, "Oh God, have mercy on my successors" three times. Someone asked, "Messenger of God, who are your successors?" The prophet said, "Those who will come after me and who will relate my ways and my tradition and instruct others after I am gone."

In his discussion about the significance of this tradition, Imam Khomeyni thinks that those who relate the prophet's ways are the theologians. The tradition of the prophet, may God bless him and grant him salvation, is the tradition of God, and anyone who wants to promote it has to familiarize himself with all divine ordinances. He has to distinguish between true and false traditions; and he has to examine public and private traditions as well as unrestricted and restricted ones. He must also know which stories originated in a Muslim sanctuary. Only a diligent theologian can accomplish all that. Imam Khomeyni says that there is no doubt that the story indicates that a theologian is entitled to the succession and to sovereign power in all affairs. The succession which is mentioned in the declaration, "Oh God, have mercy on my successors," is not conceptually different from the succession which is intended in the statement, "'Ali is my successor." No one saw the successor's position during the days of the Prince of the Faithful and subsequently during the days of the imams, may God's peace be with them, as only that of a mufti.

2. This was attributed to the prophet, may God bless him and grant him salvation: "Theologians are the authorized representatives of messengers unless they become closely attached to this world."

Since messengers were to establish a just system in society and carry out divine ordinances, they charged just theologians with that task and entrusted them with all the tasks with which they had been charged and entrusted.

3. This has been attributed to Imam al-Kazim, may God's peace be with him: "If a faithful theologian dies, he is mourned by the angels, by the locations on earth where he used to worship God, and by the gates of Heaven which had ushered in his good deeds. The loss of such a theologian is irreparable because faithful theologians are the strongholds of Islam. They are like a stronghold surrounding an entire city."

In other words, just as a town is protected by a wall that surrounds it, Muslims are protected by their theologians. Imam Khomeyni has this to say about the opinion of those who doubt the significance and relevance of this tradition to the theologian's sovereign power: "Can a theologian be considered Islam's champion and protector if he were to turn away from people and their affairs and sit in a corner of his home? Can he be considered Islam's champion and protector

if he did not protect or disseminate the doctrines of Islam, if he did not try to reform society's affairs, and if he showed no interest in Muslims?"

4. The story concerning the occurrence issue attributed to Imam al-Mahdi, may God's peace be with him. "Check with narrators of our tradition regarding events that have occurred. They are my authoritative sources, and I am an authority on divine matters."

Based on what has been traditionally understood about references to rank, one theologian comments on the imam's statement that "they [that is, narrators of our tradition] are [his] authoritative sources," and says that the significance of this story is conclusive.

That means that one is to consult with those theologians who recorded the tradition of the prophet's family, may the peace of God be with them. One is to consult with them on every matter that might require the imam's guidance or his determination of a practical position. That is because they are the imam's authoritative sources for everything in which he, may God's peace be with him, represents God's authority. Is this anything but sovereign power?

Besides numerous other accounts which may not be mentioned here because of the lack of space, some theologians provided evidence for a theologian's sovereign power by citing this verse from the Koran: "Believers, obey Allah and the Apostle and those in authority among you: [al-Nisa': 59]."

Despite the existence of accounts confirming that "those in authority" are the infallible imams, may God's peace be with them, "It is evident," says one of our theologians, "that application of the verse to the most prominent piece of corroborating evidence is intended here. Linking these matters to the fact that the corroboration intended by the verse is restricted to theologians from the prophet's family, may God's peace be with them, is unacceptable to the conventional understanding of this matter."

Since it has been established by agreement that the theologian is generally to be considered a holy man in matters of jurisprudence, delivering formal legal opinions and decisions which are adopted by people, and since he has been entrusted with matters that have to do with bequests, which include all charitable deeds which the Almighty Creator would not ignore, then this measure of authority is sufficient to justify calling the theologian a man in authority, provided this designation is used in the absence of the infallible one, may God's peace be with him; provided no special deputy has been designated; and provided no one else has been nominated to that position of authority. If "a man in authority" is a fitting title for a theologian, then he should be included in God's dictum, "Obey Allah and the Apostle and those in authority among you," and his position as sovereign power is confirmed.

If some people are clouding the issues around these and other stories by claiming that their attribution or significance is weak, those who subscribe to the notion of a theologian's sovereign power are also citing some evidence or non-traditional analogies [to support their argument].

First, while conceding the necessity of establishing an Islamic government in the time of the prophet's absence, our observation of the nature of this government leads us to call it a government by divine right. This government is not a dictatorship in which the head of state would be a despot, playing havoc with people's property and lives. It is rather a constitutional government that would be restricted by the Koran and the prophetic tradition. The right to enact laws in that government would be restricted to Almighty God.

It is that which requires that he who assumes responsibility for the affairs of this government must meet certain conditions that are compatible with the nature of such a government.

(The inquiry is to be continued).

[19 Dec 86 p 12] [Part 7]

[Text] It is this which requires that he who assumes responsibility for the affairs of this government must meet certain conditions that are compatible with the nature of such a government. In addition to the general conditions of being a reasonable and mature man, for example, there are three conditions that must be met.

A. Knowledge of divine law. This is because, as we've mentioned, this is a government of divine law. (That is, he must be a theologian.)

B. Justice. Anyone who assumes the responsibility of setting up mandatory legal punishments, discharging laws and regulating the treasury's revenues and disbursements must not be unjust.

C. Competence in the exercise of sovereign power. That is, the man who assumes responsibility for the affairs of this government in the days of the prophet's absence must be politically competent and must be a competent leader. In other words, he must be a just and competent theologian.

Second, it is obvious that Muslims have had and still have a pressing need for a ruler to manage their affairs, even if an Islamic state were not established. There are many areas in which a decision by a religious judge is needed. But having a theologian's decisions enforced in the courts and in court proceedings or appointing a just Muslim and making him legal guardian of some matters, if that were something we believed in, does not meet this need.

The only assertion that can be gleaned from stories in the tradition for dealing with this aspect is that which has to do with the theologian's sovereign power, or the sovereign power of those who relate the prophetic tradition. Some of the evidence and attributions for that assertion, however, are somewhat suspect.

Doubts about the attribution of that assertion and its significance may not have existed when the texts were written. The atmosphere in which Muslims lived, the ideas they entertained then, and the convictions they had provided the corroborating evidence [that was needed] to understand what was intended by the accounts in the tradition.



In view of this fact we find ourselves making one of two assumptions:

The First Assumption: On the basis of instructions from the imams, may God's peace be with them, it was obvious to Shi'ite Muslims before and after the prophet's departure that the assertion they preferred in that regard was that which had to do with the theologian's sovereign power.

The Second Assumption: [In this regard], the imams' preferences, may God's peace be with them, were not clear to Shi'ites.

There is no doubt that the second assumption is false. If it were true, Shi'ites would have asked many questions before the prophet's departure or during his brief absence. They would have asked questions about who would be the authority in probate cases and in decisions which had to be made by a man in authority. This means that the imams, may God's peace be with them, would have had to come up with many answers clarifying an assertion other than that of the theologian's sovereign power. Naturally, we would have heard about such answers and stories, even though what we might have heard had weak attributions or dubious meanings. At the very least, these answers and stories would have been reflected in the formal legal opinions that were issued by a few ancient scholars. But we can find no trace of that.

Third, there is another piece of evidence which brings the former evidence home. The followers of the school of the prophet's family, may God's peace be with them, have always consulted with theologians. Not only did they ask for their formal legal opinions, but they also consulted them on practical matters, such as fighting for the cause of God, for example. Followers of that school treated theologians as though they were the ones with the legitimate authority. This general, continuous mode of conduct may provide the testimony that sovereign power is derived from a doctrinal climate which is associated with the imams, may God's peace be with them. In fact, we find that a few who assumed the reins of power in Iran used to ask the just, diligent theologian for his permission to remain in power. They regarded the theologian to be the one vested with the real legitimate authority. There is, for example, a story about Shah (Tahmasab al-Safavi) who turned over the reins of power to the examining magistrate, al-Kirki, who was the imam's deputy.

#### Conditions for Sovereign Power

Article 109 of the Constitution of the Islamic Republic defined the conditions for sovereign power. These are the characteristics which a theologian who is a leader must have; theologians who serve as members of the command council must also have these characteristics, which are:

1. The knowledge and piety that are necessary qualifications for issuing formal legal opinions and serving as an authority.
2. Political and social competence, courage, and sufficient ability to manage and provide leadership.

In other words, it may be said that these are the general conditions that are accepted for an authority on tradition. In addition, he must be a competent leader, and that is required for the assumption and exercise of sovereign power.



The most prominent conditions then are: jurisprudence, justice, and efficiency. A theologian who exercises sovereign power must also be a man.

We will deal briefly with what some theologians have set forth regarding the basis for each one of these conditions.

### 1. Jurisprudence

We mentioned earlier in talking about the significance of the first story, which was cited among the traditional evidence, that it was the theologians--as Imam Khomeyni says--who were referred to in that story and in others as narrators of the tradition. The phrase, "consulting the narrators of traditions," has traditionally been construed as understanding the stories and deriving precepts from them. These stories should not be merely memorized and repeated as though they were the Scriptures.

### 2. Justice

The stories stipulated that he who leads believers in prayer must be just. If justice is a condition for leading believers in prayer--which, as we know, is a limited and temporary activity--"it then stands to reason," says one theologian, "that justice be a condition which the Islamic ruler of a nation who manages its vital, public affairs must meet."

This condition is supported by a story attributed to Imam al-Baqir, may God's peace be with him. Imam al-Baqir said, "The prophet, may God bless him and grant him salvation, said, 'The only man who is suitable for the position of imam is one who has three characteristics: he must have the piety that would keep him from disobeying God...'."

### 3. Competence

This condition is self-evident. Mr al-Ha'iri says, "There is no doubt that what has been traditionally understood by the suitable application of guardianship--that of a theologian [over a state], that of a father over his small children, or that of someone else--is that its purpose is to redress the shortcomings of the guardian's ward so as to protect his interests. That can only be accomplished if the guardian is competent in the area in which he exercises his authority. If a father lacked the competence on any subject with regard to his small son, he would have no actual authority over his son in that subject. The same is true when the matter has to do with assuming responsibility for Muslims' affairs. Anyone who does not have the competence to undertake such a momentous task has no business undertaking that responsibility. Therefore, in a situation such as this all the criteria for competence must be established and confirmed. The person who assumes responsibility for Muslims' affairs must have awareness; he must be knowledgeable and attentive; and he must have the intelligence and the ability to make the necessary decisions. He must also meet other criteria.

Imam al-Baqir's statement, which we mentioned in the previous paragraph, supports this condition. In that regard we mentioned that the imam had said, "The prophet, may God bless him and grant him salvation, said, 'The only man who

would be suitable for the position of imam is a man who has three characteristics: piety, which would keep him from disobeying God; patience, which would enable him to contain his anger; and proper guardianship of his wards so he can be like a merciful father to them'."

#### 4. The Male Requirement

Islamic evidence indicates that a woman may not undertake the task of settling disputes, nor may she adjudicate court cases. It is known that the power of the judiciary, which is one of the branches of general sovereign power, is limited.

This condition is supported by what was related in a story attributed to Imam al-Baqir, may God's peace be with him.

"A woman is not to be appointed to a position of authority in the courts, nor should she be appointed to a position of power."

This does not mean of course that Islam does not respect women or that it destroys some of their rights. That stance rather stems from the principle of division of labor according to which all tasks are assigned to those who are by their nature more suitable to it.

Finally, we pause at erudition, a condition whose implications for government differ from the implications it has on the area of issuing formal legal opinions and adopting the decisions of other authoritative scholars without question. In the area of issuing formal legal opinions, erudition means that he who is more knowledgeable would do a better job of making legal decisions that are derived from the evidence. In government, however, erudition implies not only having a good mind and being able to derive legal judgments, but it also implies how well a person understands political and social conditions and how well informed he is on foreign topics.

What one learns from the constitution of the Islamic Republic, as Ayatollah Mishkini, chairman of the Council of Experts asserts in a handwritten reply to a question, is that "It is essential that the sovereign theologian be more knowledgeable than others in the area of jurisprudence. If all theologians were equally erudite or if, for example, some of them were more knowledgeable in jurisprudence while some were more knowledgeable in politics, it would be necessary then for the nation's leadership and sovereign power to be consultative. Three or five theologians who meet the requirements would serve as members of the command council which is specified in the constitution. Together, they would deliberate on matters, and they would then issue one majority opinion on social, political and religious matters."

Some theologians support that opinion by citing numerous stories, including those attributed to Imam al-Hasan, may God's peace be with him. Imam al-Hasan is reported to have said in a speech he delivered in front of Mu'awiyah, "Whenever a nation fails to place in a position of authority over its affairs the most knowledgeable man in its midst, conditions in that nation will continue to go from bad to worse until that nation goes back to that man it had set aside [and overlooked]."

Imam 'Ali, may God's peace be with him, is also reported to have said, "Those who are most entitled to that position are those who are most capable for it and those who have the most knowledge about what God Almighty has ordained."

We conclude the discussion by answering the third question that we raised in a previous installment. How can we explain the broad participatory powers granted by the constitution of the Islamic Republic to the people? Given the fact that the constitution has adopted the notion of a theologian's sovereign power, how can we explain the decision-making powers that are afforded to the people through elections and referenda? This is what we called an advisory system under the theologian's sovereign power.

We answer that question by saying that it is possible to explain that in one of two ways or opinions.

1. The first opinion--which we learn about from statements made by some theologians, including Ayatollah al-Sayyid al-Ha'iri--implies that since the just theologian, who meets the conditions for assuming sovereign power in the age of the prophet's absence, is responsible for managing Islamic society in the best possible way, it is up to him to choose the form and kind of administration that is required by society's interests in the context of Islamic guidelines.

A sovereign theologian is one who carries out his mandate any time and any place. He uses his power to determine the specifics of the system of government and the laws which regulate matters. He determines how and to what extent he will rely on consultation, on people's opinions, on elections and on other ways of fulfilling his mandate in accordance with what he deems to be the nation's interests. Those interests may differ as circumstances and times change.

If the interests of an Islamic society--as dictated by its own circumstances or those of the universe within which that society lives--require that elections be held to appoint members of a legislative, an executive, or any other council, or to survey people's opinions so that these opinions can be taken into consideration in some aspects of legislation, then it is up to the theologian to carry that out. Such elections or surveys are to be conducted within the boundaries that are allowed by Islamic provisions. According to that opinion, this is what Imam Khomeyni did after the victory of the Islamic Revolution.

2. The other opinion was adopted by the great ayatollah, the late al-Sayyid Muhammad Baqir al-Sadr. It states that a nation has the right to turn over the political and social affairs of government [to someone] in accordance with God's provisions. A nation exercises that right on the basis of an advisory process, in accordance with what is required for divine succession. Man is God's vicar on earth, and one of his responsibilities pursuant to his role as vicar is that of managing his own affairs as God's deputy. That is, he is to manage his affairs in accordance with God's law.

However, constitutional control and supervision are required for a nation to perform its role as God's vicar or appointed successor. Here is why it is necessary to have another course, which was pursued by the prophets and their authorized agents, may God's peace be with them. That is the course of professing the Muslim creed.

In the prophet's absence a theologian who is in a position of authority represents the wise, historical extension of the prophet and the imam in his profession of the Muslim creed. As Mr al-Sadr mentions, the function of professing the creed is to grasp the theory, that is, the message of Islam. Profession of the creed protects it from distortion. A theologian who professes the creed can supervise the nation's role as God's deputy, and he can guide it in a manner that is related to the message and precepts of Islam. He can also resist the corrupt application of Islamic principles by interfering in such applications.

Mr al-Sadr says, "Developing the idea of using influential people--and that idea was applied in Islamic life--in a manner that is consistent with the rule for consultation and the rule of constitutional supervision by the imam's deputy--who is a theologian--presumes that a council to represent the nation would be established by popular elections.

Praise be to God Almighty.

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